

REMARKS

1. Claims 4 and 9 are objected to because of certain informalities regarding the phrase "wherein the substrate is either". Applicants have amended claims 4 and 9 to eliminate the aforesaid phrase. Applicants therefore request the objection be withdrawn.

2. Claims 1-9 are provisionally rejected on the ground of non-statutory obviousness-type double patenting as being unpatentable over claims 1-7 of co-pending Application No. 10/762,103 in view of U.S. Patent No. 3,700,537 ("Scher").

The rejection provides that claims 1-9 are not patentably distinct from claims 1-7 of co-pending application 10/762,103. No claims have been allowed in co-pending application serial number 10/762,104. Consequently, applicants respectfully submit that it is premature to determine the necessity of a terminal disclaimer with respect to the cited application. Once a claim is allowed (but for the obviousness double-patenting rejection) in one of the two patent applications, the merit of the present rejection can be evaluated as between the allowed claim and the pending claims in the other application. Applicants therefore respectfully request that the present rejection be held in abeyance until one or more claims are allowed in one of the aforesaid applications.

3. Claims 1, 3, and 5 are rejected under 35 U.S.C. §102(b) as being anticipated by U.S. Patent No. 3,698,978 ("McQuade").

The undersigned attorney wishes to thank Ex. Dicus for discussing this rejection on September 6, 2007. In that discussion, the undersigned attorney and Ex. Dicus discussed the differences between the language recited within the claim ("a decorative layer consisting essentially of a leather material") and the disclosure of McQuade, and in particular the significance of the claimed laminate including a leather material as opposed to paper printed to look like leather.

Case law dictates that the classic test for anticipation, under 35 U.S.C. §102(b), requires that every limitation in a claim must be present in a single source reference for that reference to "anticipate" the claimed invention. *Hybritech Inc. v. Monoclonal Antibodies, Inc.*, 802 F.2d 1367, 1379 (Fed. Cir. 1986), cert. denied, 480 U.S. 947 (1987)

("It is axiomatic that for prior art to anticipate under § 102 it has to meet every element of the claimed invention, and that such a determination is one of fact."); *In re King*, 801 F.2d 1324, 1326 (Fed. Cir. 1986) ("It is axiomatic that anticipation of a claim under § 102 can be found only if the prior art reference discloses every element of the claim, and that anticipation is a fact question subject to review under the clearly erroneous standard."). McQuade cannot anticipate claims 1, 3 or 5 because the '978 Patent does not disclose "a decorative layer consisting essentially of a leather material" as is recited in claim 1.

McQuade discloses a laminate including a print sheet comprising a cellulosic sheet and a pattern that provides an appearance that simulates leather. (See Col. 2, lines 43-46; Col. 3, lines 20-28) This print sheet is not a leather material, as is recited in claim 1. In fact, the '978 Patent teaches away from using a leather material: "With the rising cost of natural products, such as wood and leather, it has become even more desirable to provide irregularly surfaced high pressure laminates which simulate these natural products." (See Col. 1, lines 50-53)

As stated above, claim 1 recites a heat and pressure consolidated laminate that includes a decorative layer consisting essentially of a leather material. The present application defines the term "leather" as being an "animal hide". (See paragraph 0004) MPEP §2111.01 (I.) clearly states that "the words of a claim must be given their 'plain meaning' unless they are defined within the specification". (See also *In re Alex Zletz*, 893 F.2d 319, 321 (Fed. Cir. 1989) Such is the case here.

The significance of the definition of the term "leather" provided in the specification is considerable. The present application details: 1) the desirability of using a leather material with cabinetry and/or furniture (e.g., perception of quality, texture/feel, smell, etc.); 2) the disadvantages of historical applications where leather was utilized in furniture and/or cabinetry (e.g., difficult to attach, shrinkage and peel after attachment, limitations in size, etc.); and 3) the advantages of the present invention (e.g., feel/textures, resistant to shrinkage, smell of leather, etc.). These distinctions illustrate well that a laminate that includes a "leather material" is clearly distinguishable from a high pressure laminate with a print sheet having a visual appearance intended to "simulate" leather.

In addition, the stated objects of McQuade further illustrate the differences between the laminate of claim 1, and that disclosed within McQuade. The objects include "to obviate or reduce the deficiencies of the prior art, such as that indicated above"; i.e., "the rising cost of natural products, such as wood and leather". (See Col. 2, lines 5-11) These stated objects are not satisfied by a laminate that utilizes a leather material.

In light of the foregoing, it is respectfully submitted that the rejection of claims 1, 3 and 5 is not valid and it is respectfully requested that the aforesaid rejection be withdrawn and the claims allowed.

4. Claims 1-3 and 5-8 are rejected under 35 U.S.C. §103(a) as being unpatentable over Scher in view of U.S. Patent No. 5,811,122 ("Schlup").

Applicants respectfully disagree with the characterization of the references and the rejection based thereon.

Scher discloses a laminate having deeply embossed surfaces, and a method for making the same. The laminate includes a print layer 16 made of conventional construction, preferably of alpha-cellulose paper impregnated with melamine formaldehyde resin. (Col. 5, lines 18-21) Scher indicates that it is desirable to "produce high pressure laminates with deeply embossed surfaces that duplicate natural products such as slate, leather, and wood" (Col. 2, lines 47-56), and that it is an object of the invention to produce such laminates in a simplified and inexpensive manner. Hence, Scher teaches that it is desirable to produce an inexpensive, high pressure laminate that duplicates, but does not use, a natural product such as slate, leather or wood. There is no disclosure within Scher, however, suggesting that a high pressure laminate could be made less expensively by substituting a natural material such as leather in place of a cellulosic print sheet made to look like leather. On the contrary, Scher goes to great lengths to disclose embossing techniques operable to create a laminate that looks like but is less expensive than a laminate with a leather decorative layer.

Schlup, conversely, discloses a leather composite material formed by in situ polymerization of polymer precursors fully impregnated into the leather. The stated purpose of the composite material formed by in situ polymerization is to provide a leather

material with improved bulk material properties (e.g., toughness, strength, modulus). (Col. 10, lines 28-33) The leather is first fully impregnated with a solvent. According to Schlup, the term “fully impregnated” means “that the interstitial void spaces between the collagen fibers existing throughout the entire thickness of the collagen fiber network of the hide/leather have been substantially filled with the polymer system precursor solution during impregnation.” (Col. 9, line 62-66) According to Schlup, a precursor solution containing polymer precursors is subsequently applied to the leather in a fashion that permits full impregnation of the precursor solution through out the leather. (Col. 3, line 40 to Col. 4, line 53) The fully impregnated leather is subsequently processed to cure the polymer system.

There is no disclosure within Schlup that the disclosed leather/polymer composite material is or can be used within a high pressure laminate.

The Combination of the Scher and Schlup Does Not Arrive at the Claimed Laminate:

Amended claims 1 and 6 each recite a heat and pressure consolidated laminate that includes, *inter alia*, a decorative layer consisting essentially of a leather material and an underlay layer that contains one or more cellulosic sheets impregnated with a thermosetting resin. The leather decorative layer is bonded to the underlay layer along a surface of the leather decorative layer by thermosetting resin migrated from the underlay layer. The leather decorative layer is not fully impregnated with a polymer system as is disclosed within Schlup, and therefore intentionally does not have the bulk properties that are associated with a fully impregnated and cured leather layer. Indeed, the desirability of having the leather decorative layer is the feel, smell and touch of the leather decorative laminate. Neither the embossed paper of Scher nor the fully impregnated leather layer of Schlup provides such desirable qualities.

Both Scher and Schlup Teach Away from the Proposed Combination:

As stated above, Scher teaches that it is desirable to produce an inexpensive, high pressure laminate that duplicates a natural product such as slate, leather or wood. To arrive at such a product, Scher discloses embossing techniques operable to create a laminate that looks like but is less expensive than a laminate with a leather decorative

layer. Hence, Scher provides inexpensive alternatives to a laminate that includes a leather decorative layer and therefore teaches away from including a leather decorative sheet.

Schlup discloses a leather/polymer composite that is fully impregnated and fully cured. The leather/polymer composite sheet of Schlup would not, therefore, be capable of being consolidated into a high pressure laminate from a build up of sheets impregnated with B-stage resin as is taught by Scher (col. 2, lines 1-3). No covalent bonds would form between the fully cured resin of the Schlup composite and the partially cured resin of the Scher laminate sheets, and the combined laminate would likely delaminate easily. Hence, the disclosures of Scher and Schlup teach away from the proposed combination.

In addition, Schlup discloses a leather composite material formed by in situ polymerization of polymer precursors fully impregnated into the leather to provide the leather material with improved bulk material properties (e.g., toughness, strength, modulus). Schlup discloses that the full impregnation and subsequent polymerization of the leather significantly changes the leather, and gives the example that leather treated thereafter has markedly reduced ability to absorb and permeate water vapor. As indicated above, the advantage of including a leather decorative sheet within a laminate as is recited in claims 1-9, is that the leather decorative sheet is bonded but still retains the look, feel, and smell of natural leather. Hence, Schlup teaches away from the proposed combination by disclosing a leather product unsuitable for the claimed laminate.

For at least the reasons provided above, applicants respectfully request that the rejection be withdrawn and the present application be passed to allowance.

5. Claims 1-3 and 5-8 are rejected under 35 U.S.C. §103(a) as being unpatentable over Scher in view of U.S. Patent No. 5,344,692 ("Schmooch").

The rejection describes Schmooch as teaching "a leather-containing laminate composite material used in structural composite materials in applications of heat and/or pressure" and is "considered to be equivalent to Applicant's claimed leather or bonded lather material". The rejection provides that it would have been obvious to one of ordinary skill in the art to have modified the composite material of Scher to use the

leather composite material of Schmoock. Applicants respectfully traverse the rejection and direct the Examiner to the comments above regarding Scher.

Schmoock discloses a leather-containing laminate that includes a coating applied to a leather substrate. The coating includes an outer layer and an inner layer disposed between the outer layer and the leather substrate. The inner layer is disposed between the outer layer and the leather substrate. The inner layer adheres to the uneven side of the leather substrate and serves as a means for filling or at least substantially filling the surface irregularities in the one side of the leather substrate. Schmoock discloses that the inner layer may be a thermoplastic or a lacquer. There is no disclosure of the leather substrate being bonded to an underlay layer impregnated with a thermosetting resin, or suggestion that it may be consolidated in a high pressure laminate.

Regarding the proposed combination of Scher and Schmoock, Scher teaches that it is desirable to produce an inexpensive, high pressure laminate that duplicates a natural product such as slate, leather or wood. To arrive at such a product, Scher discloses embossing techniques operable to create a laminate that looks like but is less expensive than a laminate with a leather decorative layer. Hence, Scher provides inexpensive alternatives to a laminate that includes a leather decorative layer and therefore teaches away from including a leather decorative sheet. The fact that Schmoock discloses a leather coating that may enable less expensive leather to be used, does not avoid the fact identified by Scher that a leather decorative layer is more expensive than a paper decorative layer printed to look like leather.

For at least the reasons provided above, applicants respectfully request that the rejection be withdrawn and the present application be passed to allowance.

6. Claims 4 and 9 are rejected under 35 U.S.C. §103(a) as being unpatentable over Scher in view of Schlup or Schmoock, as applied to claims 1 and 6, and further in view of U.S. Patent No. 6,558,799 ("Takeuchi").

Applicants respectfully direct the Examiner to the remarks above regarding Scher, Schlup, and Schmoock, and the proposed combinations thereof. For at least the reasons identified, applicants respectfully submit that the laminate of claims 4 and 9 are not obvious in view thereof.

The rejection indicates that Takeuchi is relied upon as disclosing a substrate consisting of plywood, fiberboard, or particleboard. Applicants respectfully submit that the addition of Takeuchi does not overcome the shortcomings identified above with respect to the combined teachings of Scher, Schlup, and Schmoock.

For at least the reasons provided above, applicants respectfully request that the rejection be withdrawn and the present application be passed to allowance.

Please charge our Deposit Account No. 50-3381 for the two-month extension of time fee, as well as any additional fee that may be due in the present application.

Respectfully submitted,



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